



CITY OF BONNERS FERRY

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STAFF REPORT FOR VACATION OF PLATTED ALLEYWAY FILE #VC02-16 – CASE VACATION

Prepared by: Lisa Ailport, AICP
City Planner

Project Description: Petition to vacate a portion of a 16-foot alleyway within Block 17, of the Amended Plat of Bonners Ferry, Book 1C, Page 67, which can be generally be described as being between Lots 1-3 and Lots 22-24.

Location: The project is located south east of Boundary Street and North of North River Drive.

Parcel size: 1,696 square feet is proposed to be vacated.

Applicant: Robert and Linda Case

Applicant's Representative: Clare Marley, Ruen-Yeager and Associates

Property Owner: Same as applicant's

Petition filed with City: October 21, 2016

Notice Provided: Mailed: December 6, 2016
Published in Paper: December 1, 2016 and December 8, 2016

Council Packets: Staff report
Application and Petitions
Traffic Safety Minutes of November 16, 2016
Public Comments
Plat of Amended Plat of Bonners Ferry
Official notice and official mailing of record

PROJECT SUMMARY

The applicant is requesting to vacate a portion of a platted alleyway located adjacent to existing property owned by the applicant (see aerial below). The applicant asserts the vacation is requested because the public right-of-way serves no public need, has never been constructed in 125 years and cannot physically connect to the existing public road.



Alleyway serves no public need:

According to the application, no utilities are located within the alley. A review of city plans and utilities also concludes that no city utilities are located within the alley. Staff also forwarded the file to the City departments seeking comments or feedback regarding the request and did not receive any response from city agencies/departments regarding the proposed vacation.

Alleyway has never been constructed:

According to the application, the alleyway was dedicated to the public with the recording of the plat of Bonners Ferry, Idaho on July 9, 1890 when Bonners Ferry was still a part of Kootenai County. The plat has been in existence since 1890, over 125 years, and the alleyway, according to the applicant has only been improved with the homeowner's improvements (see application photos).

Alleyway cannot physically connect to the public road:

The platted alleyway intersects an existing public right-of-way, however this area is not where the physical road is located. As shown in the above aerial, North River Drive is physically located south of the platted right of way, which is likely due to topography in the area. According to the application, a bench/slope runs east to west which prohibits connection to the existing road known as North River Drive. Photos were submitted with the application showing the topographic constraints.

ANALYSIS:

According to Idaho Code 50-311, the City may vacate a public right-of-way when it is determined to be “expedient for the public good” to do so. Furthermore, IC 50-1306A stipulates certain procedures to be adhered to and a public hearing held. Once these requirements have been met, the City Council may grant the request to vacate with such restrictions as they deem necessary in the public interest.

While State statutes dictate the council can take this action once the notification procedures have been completed, the City does little to standardize how to evaluate the what “expedient for the public good” means. Staff, in processing the application to hearing has attempted to extract out facts through the application and petition materials and by routing the request to agencies and departments to seek comments and/or recommendations by those departments.

The application was routed to the Traffic Safety Committee, which met on November 16, 2016. This vacation request was the first petition many on the Committee had ever considered. Staff provided the following questions in order help the dialog of evaluating what how vacating the right-of-way could affect city connectivity and use:

1. Has the right-of-way served the public in the past?
 - a. Has the right of way served as a transportation corridor in the past?
 - b. Has there ever been any city owned or public utilities within the right of way?
2. Does the right-of-way currently serve the public?
 - a. Is there currently any recognized use of the right of way such as trails, pathways or other travelways?
 - b. Does anyone or any property require the right of way to maintain access to property?
3. Will the right-of-way serve the public in the future?
 - a. Is there a future need to maintaining or keeping the right of way to connect trail systems or pathways?
 - b. Will there be a need to in the future have a corridor for future transportation planning efforts?

After evaluating the above the Traffic Safety Committee felt the existing alley did not serve the interest of the public currently or in the future, and therefore made a motion to recommend approval to City Council (see attached minutes).

No other departments or agencies commented on the file.

PUBLIC COMMENTS

The City received public comments from the following. A summary of the comments are included, but the council packet includes the entire comment:

Steve Galbraith provided written letter of opposition, received on December 13, 2016, noting that the vacation, if approved, would limit access to an existing power pole that serves three properties in the area.

Staff Note: The existing power pole may be located within the platted right-of-way of North River Drive. This portion of the right-of-way is not being requested as part of the vacation request. Furthermore, a condition securing the franchised rights of any easements is provided as a condition of approval (see condition #3).

DeAnna Galbraith provided a written letter of opposition to the file received December 12, 2016 noting similar issues as did Steve Galbraith did regarding access to the existing power pole.

Lillian Clements provided a written letter to the file, received December 9, 2016, noting that she walks her dogs along Arapaho alley and the vacation would restrict her access to the public alleyway. She is opposed to the vacation.

COUNCIL ACTION:

Ultimately it is City Council who has to weigh the facts and the testimony at the hearing to ensure adequate evidence supports what “expedient for the public good” is and what it means. Draft findings have been prepared based on the file.

APPLICABLE LAWS:

Idaho Code §50-311(Vesting) Idaho Code §50-1306, (procedural)

Idaho Code §50-1320 (Vesting) Idaho Code §50-1324 (Taxes pd)

DRAFT MOTION BY THE COUNCIL

Motion to Approve: I move to approve this file VC02-16, to vacate a portion of a 16-foot wide alleyway within Block 17 of the Amended Plat of Bonners Ferry, book 1C Page 67, finding that it is in accord with Idaho Code 50-1306A and the standards of approval as outlined in the staff report and testimony received at this hearing. I further move to adopt the following findings of fact and reasoned decisions and including the conditions of approval (as amended, or as submitted) and enumerated in the staff report. The actions to be taken to obtain the vacation is to complete the conditions of approval as provided. (read conclusions 1-3)

Motion to Deny: I move to deny this file VC02-16, to vacate a portion of a 16-foot wide alleyway within Block 17 of the Amended Plat of Bonners Ferry, book 1C Page 67, finding that it is not in accord with Idaho Code 50-1306A and the standards of approval as outlined in the staff report and the testimony received at the public hearing. Furthermore, I move to adopt the following findings of fact and reasoned decisions (read conclusions 1-3- noting the findings that support your claim-which conclusions does it fail to meet)

The actions to be taken to receive approval is

1. Submit a new petition that meets the standards of Idaho Code 50-311 and 50-1306A

REASONED DECISION

***The above staff report and subsequent evidence in the record provides for the findings of fact required in order to make any conclusion of law. Based upon those findings, the following conclusions are proposed to be adopted by the City Council by motion to approve.**

Conclusion 1:

The proposal was review for compliance with I.C. §50-1306A notification requirements, procedures, and §50-1324 necessity of taxes paid. Therefore, the proposal **is/is not** in accordance with the applicable notification standards.

Finding: Certified mailings of the request to vacate was sent to landowners within 300-feet of the lands to be vacated on December 6, 2016 (file record).

Finding: Notification of the proposed hearing was published in the December 1st, and December 8th by affidavit of publication by the Bonners Ferry Herald (file record).

Conclusion 2:

The vacation of right-of-way **is/is not** in the interest of the public

Draft Finding: The alleyway has not been constructed in 125 years and does not contain any known easements or utilities (application).

Draft Finding: Physical topographic constraints prevent future construction of the alleyway and prevent the alley from connecting to the existing North River Drive in (application).

Draft Finding: The Traffic Safety Committee made a motion to recommend approval of the vacation finding that the right-of-way does not currently serve the interest of the public and will not serve the interest of the public in the future (draft 11/16 minutes).

CONDITIONS OF APPROVAL

1. The vacation of the above described right-of-way shall be effective upon recording of a resolution by the Council granting the vacation, vesting to reside with Robert and Linda Case.
2. Prior to recording of the vacation resolution, warranty deed(s) shall be prepared for recording combining the vacated alleyway with the ownership on either side of the alleyway to the satisfaction of the City. Once the vacation is recorded, the deed(s) shall be recorded combining the ownership into one parcel of land. The deed(s) shall reference the following language in the recording of the property consolidation, "The franchised rights of and easements of public utilities, if any, shall not be impaired by the recording of the vacation and shall remain in force."